

ICTR-98-44-T
19-3-2008
(34405-34400)

34405
#M



UNITED NATIONS
NATIONS UNIES

International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

TRIAL CHAMBER III

Case No. ICTR-98-44-T

ENGLISH
Original: FRENCH

Before: Judge Dennis C. M. Byron, presiding
Judge Gberdao Gustave Kam
Judge Vagn Joensen

Registrar: Adama Dieng

Date: 19 February 2008

THE PROSECUTOR

v.

ÉDOUARD KAREMERA
MATHIEU NGIRUMPATSE
JOSEPH NZIRORERA

JUDICIAL RECORDS/ARCHIVES
UNICTR
2008 MAR 19 10 5 19
D. Byron

DECISION ON ÉDOUARD KAREMERA'S MOTION FOR ORDERS FOR
THE PROTECTION OF DEFENCE WITNESSES

Article 21 of the Statute, Rules 69 and 75 of the Rules of Procedure and Evidence

Office of the Prosecutor
Don Webster
Alayne Frankson-Wallace
Iain Morley
Saidou N'Dow
Gerda Visser
Sunkarie Ballah-Conteh
Takeh Sendze
Deo Mbutu

Counsel for Édouard Karemera
Dior Diagne Mbaye and Félix Sow

Counsel for Mathieu Ngirumpatse
Chantal Hounkpatin and Frédéric Weyl

Counsel for Joseph Nzirorera
Peter Robinson and Patrick Nimy Mayidika Ngimbi

CII108-0032 (E)

1

Translation certified by LSS, ICTR

INTRODUCTION

1. On 31 January 2008, Édouard Karemera filed a motion for orders for protective measures for the witnesses that he intends to call to testify.¹ He based his application on the fact that the witnesses fear for the safety and physical wellbeing of themselves and of their close family members still living in Rwanda.
2. Joseph Nzirorera joined in that motion, but requested the Chamber to limit the protection orders to Édouard Karemera's witnesses.²
3. Following an interim order issued by the Trial Chamber on 8 February 2008,³ Édouard Karemera filed a confidential supplemental brief to provide additional information about the real and objective fears expressed by the witnesses that he intends to call to testify. In an annex to that brief, Édouard Karemera provided specific information about eight witnesses in particular (the "Annex").⁴
4. The Prosecution opposes Édouard Karemera's motion.⁵

DELIBERATIONS

5. Article 21 of the Statute of the Tribunal (the "Statute"), as well as Rules 69 and 75 of the Rules of Procedure and Evidence (the "Rules") provide that either party may request the Chamber, in exceptional circumstances, to order appropriate measures for the protection of victims and witnesses. The Chamber may also order such measures *proprio motu*.⁶
6. Established case law provides that witnesses in respect of whom protective measures are sought must be faced with a real threat to their own safety or to that of their families, and that their fear must be objectively justified.⁷ Witness protection measures are granted on a case-by-

¹ *Requête d'Édouard Karemera sur les fondements des articles 19 à 21 du Statut, et 69 et 75 du RPP: Mesures de protection des victimes et témoins (« Requête d'Édouard Karemera »)*, filed on 31 January 2008.

² Joseph Nzirorera's Response to Karemera Motion for Protective Measures, filed on 7 February 2008.

³ *The Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, *Ordonnance intérimaire relative à la requête d'Édouard Karemera en vue d'une ordonnance de protection des témoins à décharge* (Trial Chamber), 8 February 2008.

⁴ *Mémoire complémentaire en vue de fournir les éléments justifiant la demande de protection des témoins (« Mémoire complémentaire d'Édouard Karemera »)*, filed on 14 February 2008.

⁵ Prosecutor's Response to Karemera's Motion for Protective Measures for Defence Witnesses, filed on 11 February 2008 ("Prosecutor's Response"), para. 5; Prosecutor's Response to Karemera's Supplemental Filing in Support of Motion for Protective Measures for Defense Witnesses ("Prosecutor's Response to Supplemental Filing"), filed on 15 February 2008.

⁶ *The Prosecutor v. Nzabirinda*, Case No. ICTR-01-77-I, *Decision on Extremely Urgent Defence Motion for Protective Measures for Defence Witnesses* (Trial Chamber), 5 October 2006, para. 7.

⁷ *The Prosecutor v. Juvenal Rugambarara*, *Decision on the Prosecutor's Motion for Protective Measures for Witnesses* (Trial Chamber), 28 October 2005, para. 6; *The Prosecutor v. Nzabirinda*, *Décision relative à la requête*

The Prosecutor v. Édouard Karemera, Mathieu Ndirumpatse, Joseph Nzirorera, Case No. ICTR-98-44-T

Decision on Édouard Karemera's Motion for Orders for the Protection of Defence Witnesses

19 February 2008

case basis. The Chamber must also take into consideration the fairness of the trial and equality between the parties.⁸

7. The Prosecution requests the Chamber to deny the protective measures sought for the witnesses mentioned in the Annex under the pseudonyms LOL and LSP.⁹ It contends that the Defence has not demonstrated any objective threat, insecurity or risk that the witnesses could be faced with. In respect of the remaining witnesses mentioned in the Annex, the Prosecution requests the Chamber to order only temporary protective measures for them and to reserve its decision to assign pseudonyms to those witnesses until the Chamber has made a direct inquiry of each witness itself.¹⁰ Lastly, the Prosecution requests the Chamber to deny protective measures for all the other witnesses mentioned in Édouard Karemera's first motion.¹¹

8. With respect to Witness LOL, Édouard Karemera explains that the witness cannot obtain a visa to come to Arusha because of the current conditions of his residence in a foreign country. He avers no threat or fear that would justify the granting of protective measures.¹²

9. As regards Édouard Karemera's request for Witness LOL to testify via video-link, the Chamber recalls that the request must satisfy four criteria: (1) the testimony must be sufficiently important; (2) testimony via video-link must be in the interests of justice; (3) the witness must show good cause for his inability or refusal to go to the Tribunal; and (4) the Accused must not suffer prejudice in exercising his rights to a fair trial.¹³ In this case, the Chamber notes that the arguments advanced by Édouard Karemera with respect to the inability of the witness to travel justify the witness being allowed to testify via video-link. The Chamber is of the opinion that the deposition will not prejudice the other parties and that recourse to video-link testimony is prescribed in this case in the interests of justice. Lastly, the Chamber is satisfied that the testimony of Witness LOL appears to be sufficiently important for this procedure to be used.

10. With respect to the remaining witnesses mentioned in the Annex, including Witness LSP, as well as the other witnesses in respect of whom Édouard Karemera requests protection in his motion, the Chamber is of the opinion that the new facts cited by Édouard Karemera can be the source of real fear and a danger to the security of those witnesses were they to participate in the

du Procureur en prescription de mesures de protection des victimes et des témoins (Trial Chamber), 4 May 2004, para. 5; *The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-T, Decision on the Defence Motion for Protective Measures for Defence Witnesses (Trial Chamber), 16 May 2007, para. 6.

⁸ *The Prosecutor v. Gacumbitsi*, Case No. ICTR-2001-64-T, Decision on Defence Motion for Protective Measures for Defence Witnesses (Trial Chamber), 25 August 2003, para. 8; *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Bagosora Motion for Protection of Witnesses (Trial Chamber), 1 September 2003, paras. 2 and 4.

⁹ Prosecutor's Supplemental Response, para. 4.

¹⁰ *Ibid.*, para. 5.

¹¹ *Ibid.*, para. 6.

¹² Annex to Édouard Karemera's Supplemental Brief, p. 1.

¹³ *The Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Ntabakuze Motion to Allow Witness DK 52 to give Testimony by Video-Conference (Trial Chamber), 22 February 2005, para. 4; *The Prosecutor v. Bikindi*, Case No. ICTR-2001-72-T, Decision on Defence Motion for Testimony of Witness DIH Via Video Link (Trial Chamber), 5 September 2007, para. 2.

Tribunal's proceedings. The complaints by the witnesses, particularly that they allegedly had been or are sought and persecuted by RPF, show the objective fears they have about their safety. Lastly, the Chamber recalls that similar protective measures have been granted in this trial to Prosecution witnesses. The Chamber, therefore, concludes that there are exceptional circumstances in this case justifying the non-disclosure of the identity of the witnesses.

FOR THESE REASONS, THE CHAMBER

I. PARTIALLY GRANTS Édouard Karemera's motion;

II. AUTHORIZES Witness LOL to give testimony by video-link;

III. DIRECTS the Registry to take all necessary measures, in consultation with the parties, to take this deposition and to record it on video tape for future consultation by the Chamber; and

IV. GRANTS, except for Witness LOL, the following protective measures for the witnesses mentioned by Édouard Karemera in his Motion and Supplemental Brief who have not expressly waived their right to protective measures:

1. **ORDERS** that the names, addresses, whereabouts and other identifying information concerning the persons protected by this Decision be sealed by the Registry in all records of the Tribunal.
2. **ORDERS** the Registry not to disclose the names, addresses, whereabouts or any other identifying information concerning the persons protected by this Decision except to the Witnesses and Victims Support Section, in accordance with established procedure, and for the sole purpose of implementing the protective measures sought for those persons.
3. **ORDERS** that the names, addresses, whereabouts and all other identifying information concerning the persons protected by this Decision in the records of the Tribunal be placed under seal.
4. **ORDERS** that the names, addresses, whereabouts and all other identifying information concerning the persons protected by this Decision, in particular information in supporting material or in records filed with the Registry, just to mention a few, be not disclosed to the public or to the media, and **DECIDES** that this order shall remain in force after the completion of the trial.
5. **ORDERS** the Prosecution not to disclose to, examine with, or reveal directly or indirectly to any person or legal entity, with the exception of its members working directly on the case, any document or information contained in any document or any other information the disclosure of which has been prescribed above, subject to the specific directions given in Order No. 6.

6. ORDERS the Prosecutor:

- (i) To communicate to the Witnesses and Victims Support Section the names of all members of the immediate Prosecution team who will have access to any protected information in pursuance of the above-mentioned non-disclosure measures;
- (ii) To notify the said Section in writing of any change in the composition of the immediate Prosecution team;
- (iii) To ensure that any member of the Prosecution team who leaves the team returns, at the time of departure, all materials containing identifying information about persons protected by this Decision;

7. ORDERS the Defence to disclose to the Prosecution all identifying information in its possession about witnesses, as well as all similar information in the supporting material filed with the Registry, at least 30 days before the commencement of Édouard Karemera's case;

8. ORDERS the Prosecution to inform the Defence, in writing and within reasonable time, whenever it wishes to contact any person protected by this Decision; after receipt of such notification, the Defence shall take immediate steps to facilitate the contact, subject to prior consent of the protected person or, if the person is less than 18 years old, the consent of his parents or his legal guardian, and the Witnesses and Victims Support Section may facilitate the meeting;

9. ORDERS the media and the public not to make audio recordings, films, or sketches or take photographs of persons protected by this Decision, unless otherwise authorized by the Chamber or with the consent of the witness.

10. ORDERS all members of the immediate Prosecution team not to independently attempt to find out the identity of persons protected by this Decision or in any way aid and abet anyone attempting to discover the identity of these persons.

11. AUTHORIZES the Defence not to disclose identifying information about the protected witnesses to the Prosecution, and to temporarily write [sic] their names, addresses, whereabouts and other identifying information where they appear in witness statements or in other documents disclosed to the Prosecution.

12. ORDERS the Defence to assign to each person protected by this Decision a pseudonym by which he or she shall be called during proceedings before the Tribunal, in communication and exchange of views between the parties to the trial and with the public, until the Chamber decides otherwise.

The Prosecutor v. Édouard Karemera, Mathieu Ngirumpatse, Joseph Nzirorera, Case No. ICTR-98-44-T

Decision on Édouard Karemera's Motion for Orders for the Protection of Defence Witnesses

19 February 2008

Arusha, 19 February 2008, done in French.

[Signed]

Dennis C. M. Byron
Presiding Judge

[Signed]

Gberdao Gustave Kam
Judge
(Absent at the time of
signature)

[Signed]

Vagn Joensen
Judge

[Seal of the Tribunal]

